

ILLINOIS POLLUTION CONTROL BOARD
August 7, 2008

KIBLER DEVELOPMENT CORPORATION)
and MARION RIDGE LANDFILL, INC.,)
)
Petitioners,)
)
v.) PCB 05-35
) (Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

Currently pending before the Board are a motion for voluntarily dismissal of this action and a motion to intervene. For the reasons expressed below, the Board grants the first motion, denying the second as moot.

On July 21, 2008, the petitioners filed a motion to voluntarily dismiss this appeal (Mot. Dismiss). The motion states that “[a]ll disagreements concerning the permit hav[e] been resolved” between the parties. Mot. Dismiss at 1. The motion recites that it was filed with the approval of respondent’s counsel. *Id.* On July 22, 2008, respondent filed a response (Resp. Dismiss) in support of the motion, stating that “[t]he matters at issue in the above cases [PCB 05-35 and PCB 07-43] were settled by the parties”. Resp. Dismiss at 1.

Also, on July 21, 2008, but after receipt of petitioners’ motion, the Board received a motion to intervene (Mot. Intervene) “pursuant to Section 101.402 of the Board’s procedural rules and Section 5/3-9005(a)(1) of the Illinois Counties Code (55 ILCS 5/3-9005(a)(1), 35 Ill. Adm. Code 101.402)” filed by the State’s Attorney of Williamson County, Charles Garnati, in his official capacity, on behalf of the People of Williamson County. Mot. Intervene at 1. Citing various precedent in support of the State’s Attorney request to intervene here, the motion stated that

State's Attorney's intervention will not unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding. *Id.* at 2.

On July 28, 2008, the Agency filed a short response in opposition to the motion to intervene (Resp. Intervene). The Agency states:

The State’s Attorney of Williamson County filed its motion to intervene on July 21, 2008. The matters at issue in the above cases were previously settled by the parties and the Petitioner filed a motion to dismiss on July 18, 2008. No issues

remain in the case and an intervention at this late date would not further the progress of a case that is basically settled and over. Resp. Intervene at 1.

The Board has received no response from petitioners to the motion to intervene.

The Board first turns to the earliest-filed motion. The Board routinely grants petitioners' motions to voluntarily dismiss their own petitions for review of permits. Here, the named parties assert that their disagreements have been resolved, and all matters at issue resolved. The Board accordingly grants the motion for voluntary dismissal of this action.

The Board next denies the motion to intervene. In so doing, the Board notes the standard for decision for such motions in the Board's procedural rule:

In determining whether to grant a motion to intervene, the Board will consider the *timeliness* of the motion and whether intervention will *unduly delay or materially prejudice* the proceeding or otherwise interfere with an orderly or efficient proceeding. 35 Ill. Adm. Code 101.402(b) (emphasis added).

The procedural rules go on to provide that the Board may "limit the rights of the intervenor as justice may require", including a limit that

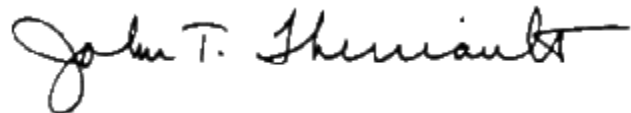
the intervenor cannot raise issues that were raised or *might more properly have been raised at an earlier stage* of the proceeding. 35 Ill. Adm. Code 101.402(e) (emphasis added).

Considering the circumstances of this case, at this time there is no existing case or controversy between the original parties in which to allow the movant to intervene. The request to intervene in this case is untimely, or, in other words, moot.

In summary, the Board grants petitioners' motion, dismisses the appeal, and closes the docket. The motion to intervene is denied as moot.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board